Nos. 581-583

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In the Supreme Court of the United States

AMERICAN PRESIDENT LINES, LTD., a corporation, *Petitioner*,
v.
JAMES M. AGNEW, et al., *Respondents*.

AMERICAN PRESIDENT LINES, LTD., a corporation, *Petitioner*,
v.
JOHN W. GRIFFIN, et al., *Respondents*.

AMERICAN PRESIDENT LINES, LTD., a corporation, *Petitioner*,
v.
AUGUSTUS FEDERER, et al., *Respondents*.

Consolidated on Appeal

Petition for Writ of Certiorari and Brief in Support Thereof

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SUBJECT INDEX

Page

PETITION FOR WRIT OF CERTIORARI

Opinions Below 1

Jurisdiction 2

Questions Presented 2

1. Does the National Labor Relations Act (N.L.R.A.) permit granting more advantageous terms of employment to employees under individual contracts of hire than are provided by concurrently applicable collective bargaining agreements containing maximum and not minimum terms? 2

2. Does Section 676, 46 U.S.C., which states that shipping articles "shall be deemed to contain all the conditions of contract," require holding that shipping articles are the exclusive contract of employment to the exclusion of an operative collective bargaining agreement containing similar and other terms of employment? 2

3. Assuming that a collective bargaining agreement is an integral part of the contract of employment and governs in the event of conflict with an individual contract of hire, do the collective agreements herein involved provide for payment of war bonus while crew members of *The President Harrison* were interned by the Japanese on land? 3

Statutes Involved 3

Statement of the Case 3

Reasons for Granting the Writ 12

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinions Below 19

Jurisdiction 20

Questions Presented 20

1. Does the National Labor Relations Act (N.L.R.A.) permit granting more advantageous terms of employment to employees under individual contracts of hire than are provided by concurrently applicable collective bargaining agreements containing maximum and not minimum terms? 20

Page

2. Does Section 676, 46 U.S.C., which states that shipping articles "shall be deemed to contain all the conditions of contract," require holding that the shipping articles are the exclusive contract of employment to the exclusion of an operative collective bargaining agreement containing similar and other terms of employment? 20

3. Assuming that a collective bargaining agreement is an integral part of the contract of employment and governs in the event of conflict with an individual contract of hire, do the collective agreements herein involved provide for payment of war bonus while crew members of *The President Harrison* were interned by the Japanese on land? 20

Statement of the Case 20

Argument 21

TABLE OF AUTHORITIES CITED

Pages

CASES

American Federation of Labor v. American Sash and Door Co., et al., 335 U.S. 525, 542, 552 ..... 15, 24

Armstrong et al. v. Matson Navigation Co. (N.D. Cal.) ..... F. Supp. ....., now pending on appeal 33

Case Co. v. N. L. R. B., 321 U.S. 332 ..... 14, 15, 22, 23, 24, 25, 26

Clayton v. Standard Oil Co. of New Jersey (S.D. Tex.) 42 F. Supp. 734, 743 29

Consolidated Edison Co. v. N. L. R. B., 305 U.S. 197, 236 ..... 16, 22

Cosmopolitan Shipping Co. v. McAllister, ... U.S. ....., 93 L.ed. 1278, 1284-87 ..... 17, 33

Fink v. Shephard S. Co., ... U.S. ....., 93 L.ed. 1287 ..... 17, 33

Giboney v. Empire Storage Co., ... U.S. ....., 93 L.ed. 649, 657 31

Graham v. Brotherhood of L. F. & E., ... U.S. ....., 94 L.ed. 1, 5 ..... 15, 25

H. J. Heinz Co. v. N. L. R. B., 311 U.S. 514, 523-526 ..... 16, 22

Lewellyn v. Fleming (C.C.A. 10th), 154 F.2d 211, 214 ..... 15, 25

Mason v. Texas Co. (C.C.A. 1st), 171 F.2d 559, 562, cert. den. 93 L.ed. 1035 6

May Department Stores Co. v. N. L. R. B., 326 U.S. 376, 384 ..... 15, 24

Medo Photo Supply Corp. v. N. L. R. B., 321 U.S. 678 ..... 15, 24

Montoya v. Tidewater-Associated Oil Co. (C.C.A. 2d), 174 F.2d 607, 610, cert. den. 94 L.ed. 58 6

N. L. R. B. v. Waterman S. Corp., 309 U.S. 206 ..... 16, 26

Nye & Nissen v. United States, ... U.S. ....., 93 L.ed. 752 ..... 18, 34

Order of R. Telegraphers v. Railway Express Agency, 321 U.S. 342 .. 22

Robertson v. Baldwin, 165 U.S. 275, 287 27

Steeves v. American Mail Line, Ltd. (C.C.A. 9th) 154 F.2d 24 ..... 14, 33

Waterfront Employers Assn. of the Pacific Coast, 71 N.L.R.B. 14 (1946) 32

Pages

STATUTES

61 Stat. 136, Sec. 8(b)(3) (Labor Management Act of 1947) 22

28 U.S.C. Sec. 1254(1) 2

29 U.S.C. Secs. 151 et seq., 49 Stat. 449 (N.L.R.A.) 3, 21

42 U.S.C. Secs. 1701-1717, 56 Stat. 1028 6

46 U.S.C. Sec. 676 .....2, 3, 12, 13, 15, 16, 17, 20, 26, 27, 28, 29, 30, 32

50 U.S.C. App. Secs. 1001-1018, 56 Stat. 143 6

50 U.S.C. App. Secs. 2001 et seq., 62 Stat. 1240 (The War Claims Act of 1948, as amended) 31

OTHER AUTHORITIES

Address of Mr. Roger Lapham, Maritime Employer-Employee Relations, before The American Merchant Marine Conference, December 10, 1940 7

Hearings before House Committee on the Merchant Marine and Fisheries, H.R. 3262, and 2652 (78th Cong., 2nd Sess., Dec. 9, 1943, and February 10, 1944) pp. 25, 60 4

Kerr and Fisher, Conflict on the Waterfront, Atlantic Monthly (Sept. '49) 17-23 32

M.W.E.B. Decision No. 2A, 8 Fed. Reg. 3461, 3462 6

M.W.E.B. Decision No. 5, Rev. Feb. 21, 1942 6

Remarks of Senator Wayne Morse, during debate of 1947 Labor-Management Act, 93 Cong. Rec. 1900-1901, 1904-1910 ..... 7, 32

Supreme Court Rule 38(2) 20

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AMERICAN PRESIDENT LINES, LTD., a corporation, *Petitioner*, v. AUGUSTUS FEDERER, et al., *Respondents.*		

Petition for Writ of Certiorari

Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Ninth Circuit entered in these causes on September 9, 1949, reversing the judgment of the District Court of the United States for the Northern District of California, Southern Division.

OPINIONS BELOW

The opinion of the District Court is reported at 73 F. Supp. 944. The initial opinions of the Court of Appeals are not reported (R. 414, 132*).[1] Modifications of these opinions entered by the Court of Appeals are reported at 1949 A.M.C. 1007 (R.

*Reference is to record in *American President Lines, Ltd. v. August Federer et al.*

1. Unless otherwise noted, all record references are to that in *American President Lines, Ltd. v. James M. Agnew et al.*

421, 134*). A petition for rehearing was filed. The petition was denied, but the Court of Appeals entered substantial modifications of its former opinions. The final opinions are reported at 177 F.2d 107, 111 (R. 428, 135,* 48†).

JURISDICTION

The original opinion of the Court of Appeals in *Agnew et al. v. American President Lines* was filed May 5, 1949, and amended by a *nunc pro tunc* order of May 6, 1949. The original *per curiam* opinion in *Griffin et al. v. American President Lines* and *Federer et al. v. American President Lines* was filed May 6, 1949. The Court of Appeals filed a modified opinion in the *Agnew* case on May 18, 1949, to correct an error in the earlier opinion whereby the court had awarded an allowance that had not been sought. Modified opinions in the *Griffin* case and the *Federer* case were filed May 19 and 28, 1949. Petition for rehearing was filed. It was denied September 9, 1949, and final opinions in all three cases, containing substantial modifications, were at that time entered. Mandate was stayed pending the outcome of petitioner's petition for the writ of certiorari to the Supreme Court. Extensions of time in which to file a petition for writ of certiorari were granted extending the time in which to file until February 5, 1950. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does the National Labor Relations Act (N.L.R.A.) permit granting more advantageous terms of employment to employees under individual contracts of hire than are provided by concurrently applicable collective bargaining agreements containing maximum and not minimum terms?

2. Does Section 676, 46 U.S.C., which states that shipping articles "shall be deemed to contain all the conditions of con-

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*Reference is to record in *American President Lines, Ltd. v. August Federer et al.*

†Reference is to record in *American President Lines, Ltd. v. John W. Griffin et al.*

tract," require holding that shipping articles are the exclusive contract of employment to the exclusion of an operative collective bargaining agreement containing similar and other terms of employment?

3. Assuming that a collective bargaining agreement is an integral part of the contract of employment and governs in the event of conflict with an individual contract of hire, do the collective agreements herein involved provide for payment of war bonus while crew members of *The President Harrison* were interned by the Japanese on land?

STATUTES INVOLVED

The pertinent statutes involved are the National Labor Relations Act, 49 Stat. 449, 29 U.S.C. §§ 151 *et seq.;* 46 U.S.C. § 676. The pertinent portions are quoted in the Appendix.

STATEMENT OF THE CASE

Three libels were filed by the various respondents, merchant seamen, to recover war bonuses and maintenance during internment on land by the Japanese (R. 1, 1,* 1†). The three cases were consolidated for trial and on appeal (R. 37, 412, 106*).[2] Petitioner seeks review of the Court of Appeals decisions which reversed the District Court and awarded war bonus allowances to respondents for the internment period.[3]

The basic facts are undisputed. Petitioner at all relevant times was the owner and operator of the American passenger vessel, *The President Harrison* (R. 24). Respondents comprise a sub-

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†Reference is to record in *American President Lines, Inc. v. John W. Griffin et al.*

2. The United States was allowed to intervene in this litigation, taking a position hostile to the claims of the respondents, in order to protect its interests in the outcome of the litigation (R. 34).

3. Respondents also made claims for maintenance allowances during internment (R. 374). The District Court held against these claims, and the Court of Appeals affirmed. Respondents did not press these claims on rehearing, which suggests acquiescence in the decision of the Court of Appeals.

stantial part of the vessel's crew, which numbered approximately 172; they were both licensed and unlicensed personnel (R. 203, Ex. No. 1). Like claims by other crew members depend on the outcome of the present litigation. Respondents were also members of various Pacific maritime unions (R. 30, 102*, 27†). Shipping articles were opened October 15, 1941, and two days later *The President Harrison* sailed from San Francisco for Manila (R. 207). On arrival there, the vessel was chartered by the United States Maritime Commission for the United States Navy and sailed for Chinwangtao, China, to evacuate United States Marines and civilians of American citizenship (R. 221, 385). As a result of this charter the full burden of respondents' claims falls on the United States, which is the real party in interest.[4] *The President Harrison,* after grounding on Shaweishan Island, China, was overtaken and seized by the Japanese on December 8, 1941 (R. 209-211). The crew members of the vessel were subsequently interned by the Japanese in and about Shanghai until the surrender of Japan brought about their liberation (R. 26, 27, 215, 216). They were then repatriated to United States ports (R. 27, 219).

On repatriation at these ports, petitioner paid the crew members basic wages and emergency wages according to the rates specified in applicable collective bargaining agreements (R. 343).[5] The payments for the full period of internment varied

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*Reference is to record in *American President Lines, Inc. v. August Federer et al.*

†Reference is to record in *American President Lines, Inc. v. John W. Griffin et al.*

4. See Hearings before House Committee on the Merchant Marine and Fisheries, on H.R. 3262, and 2652 (78th Cong., 2nd Sess., Dec. 9, 1943, and February 10, 1944) pp. 25, 60.

5. Respondents, according to their ratings, were members of various maritime unions having collective bargaining agreements, termed "basic agreements," with petitioner (R. 287, 288, Ex. No. A (Bryan) 2, 3, 4, 5, 6). The wage specified in them is known as the basic wage, which is the monthly wage paid crew members, according to ratings, for services rendered. Later new basic agreements were negotiated containing provisions for increases of basic wages. These agreements also provided for additional wages termed "emergency wages," which represented percentages of the

according to the ratings of the respondents from allowances in excess of $3800 to a maximum of $17,964.92, which were for the period of internment and repatriation and in addition to "earned wages" which were also paid (R. 18A, 344-46, 88B,* 18A†). Thus, respondents received basic wages and emergency wages during their entire period of internment and their repatriation journey.

In addition to these allowances, respondents were paid war bonuses for the period *The President Harrison* was on a voyage in the war zone (R. 28, 340-41). The rate at which the war bonus was computed was that specified in operative collective bargaining agreements (supplementary bonus agreements), even when in excess of the rate specified in the shipping articles (R. 341-342). Respondents were also tendered war bonuses for a portion of the repatriation voyage (R. 19, 344-46, 88C*, 19†). Dispute arose over whether petitioner had met all of its contractual obligations to respondents.

Petitioner contended that war bonuses were due under riders attached to the shipping articles and applicable collective agreements (supplementary bonus agreements) only while *The President Harrison* was on a voyage in a war zone as defined by such collective agreements, and for portions of respondents' repatria-

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†Reference is to record in *American President Lines, Inc. v. John W. Griffin et al.*

basic wage and were also paid for services rendered (287, 291, Ex. No. A (Bryan) 55, 56, 57, 58, 59). The emergency wages in no sense represented payments for exposure to war risks (R. 180, 181). The allowances paid respondents for basic wages and emergency wages were in accord with the rates specified in these basic agreements and covered that period while petitioners were interned. Although some of the agreements were negotiated after *The President Harrison* sailed, all of them by their express terms were effective on a date prior to sailing (R. 341, 343). The collective bargaining agreements rates were observed even when in excess of those specified in the shipping articles (R. 343). There has never been any dispute that the respondents were entitled to basic wages and emergency wages until repatriated to a United States port, since both the shipping articles and other collective agreements, termed supplementary bonus agreements, so provided.

tion voyage (R. 257-58, 260-61). Accordingly, no war bonus was paid or tendered for that period during which respondents were interned in China.[6]

Respondents predicated their claims solely on the riders attached to the shipping articles and completely ignored controlling collective agreements. Apart from providing for basic wages and emergency wages, the riders contained provisions concerning war bonuses.[7] In pertinent part, these provisions of the licensed personnel rider read as follows:

> "1. The American President Lines agrees to pay [a war bonus][8] * * * to the licensed crew of the S.S. President Harrison, Voyage 55.
>
> * * * * *

6. These payments made and tendered by petitioner to respondents coincide with what the Maritime War Emergency Board ultimately decided was proper for all seamen who might be interned by the enemy, *i.e.*, basic wages and emergency wages were payable during internment, but war bonuses were payable only while aboard a vessel engaged on a voyage in a war zone and not during internment on land. See M.W.E.B. Decision No. 5, Rev. Feb. 21, 1942 (R. 302, Ex. No. B (Nielsen) 8); M.W.E.B. Decision No. 2A, 8 Fed. Reg. 3461, 3462; see also *Mason v. Texas Co.* (C.C.A. 1st), 171 F.2d 559, 562, *cert. den.* 93 L.ed. 1035; *Montoya v. Tidewater Associated Oil Co.* (C.C.A. 2d), 174 F.2d 607, 610, *cert. den.* 94 L.ed. 58. Moreover, the obligations recognized and honored by petitioner under these collective agreements and riders attached to the shipping articles were as generous as those which Congress eventually allowed to government employees interned by the enemy, 56 Stat. 143, 50 U.S.C. App. §§1001-1018; and employees of contractors with the United States who were interned by the enemy, 56 Stat. 1028, 42 U.S.C. §§1701-1717. These materials indicate that petitioner in providing protection for its employees subject to war risks anticipated the entire shipping industry and Congress. There is no apparent reason why the meaning of these contractual provisions should be strained to allow more generous allowances to respondents than those received by thousands of other American citizens similarly situated.

7. Although the riders contained provisions for basic wage and emergency wage allowances in case of internment, they were primarily designed, as were the supplementary bonus agreements, to cover war bonus allowances during voyages of the vessel.

8. "War bonus" has been substituted for the term "emergency wage increase," which appears in the riders attached to the shipping articles. The Court of Appeals in its first decision (R. 414) confused the term "emergency wage" (which petitioner paid for the internment period) with "emergency wage increase." The parties agreed during the trial that the

"3. This [war bonus] to apply from the crossing of the 180th meridian westbound until the crossing of the 180th meridian eastbound.

"4. *In the event the vessel is interned,* destroyed or abandoned as a result of war operations and is unable to continue her voyage, basic wages and emergency wages specified in the collective bargaining agreement between Pacific American Shipowners Association and the Unions shown above shall be paid to the date the members of the crew arrive in a continental United States Port, and the employees shall be repatriated to a Continental United States Port. *War bonuses * * * shall be paid while employees are in the war zones* defined herein."[9] [Italics added]

Petitioner contended that these riders must be construed in conjunction with the supplementary collective agreements which were effective during the times in question. These collective agreements dealing specifically with the subject of war bonuses, like the basic agreements which they supplemented, were negotiated by the various maritime unions representing respondents and the Pacific American Shipowners Association (P.A.S.A.),[10] an employers' association acting for petitioner (R. 137-176). The agreements consummated after such collective bargaining and the effect given the same in determining the terms of employment now in question are of vital importance to this litigation.

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term "emergency wage increase" means "war bonus" (R. 329-332). The latter term as agreed upon will be used throughout the petition, brief, and in the Appendix.

9. The rider attached to the shipping articles governing the unlicensed personnel (Ex. No. 1) is substantially the same as that quoted. It appears in the Appendix.

10. Since 1936 the P.A.S.A. has negotiated collective bargaining agreements with the various maritime unions involved (R. 127). The negotiations have established employment conditions aboard vessels effective throughout the shipping industry on the Pacific Coast. The system of industry-wide bargaining was adopted to cope with area problems, and it is now considered fundamental to the maintenance of harmonious labor-management relations in the shipping industry of this area. See remarks of Senator Wayne Morse, during debate of 1947 Labor-Management Act, 93 Cong. Rec. 1900-1901, 1904-1910; see also address of Mr. Roger Lapham, Maritime Employer-Employee Relations, before The American Merchant Marine Conference, December 10, 1940.

After the outbreak of World War II in Europe, the unions and ship operators were concerned with the question of war bonuses payable to seamen employed aboard vessels in war areas. Two basic issues were involved: when should bonuses be paid; and, what rate should prevail. As early as 1940 the war bonus question on the Pacific Coast became the subject of collective bargaining agreements, which supplemented the basic collective bargaining agreements. Three series of such agreements (called supplementary bonus agreements) were negotiated between February 1940, and May 1941 (R. 287-289, Ex. No. A (Bryan) 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26). During this period the varying demands for war bonuses on the Atlantic, Gulf, and Pacific Coasts created a chaotic condition. To bring about a measure of stability and uniformity in regard to war bonus rates the United States Maritime Commission called a conference in Washington, D. C., between the ship operators and the union representatives of the licensed personnel (R. 287, 289, Ex. No. A (Bryan), 30, 31).

A nationwide agreement, which established a uniform basis for war bonuses for licensed personnel was consummated on August 16, 1941 (R. 287, 290, Ex. No. A (Bryan) 33). It is undisputed that this agreement was the first collective agreement to provide for the consequences of internment, destruction and abandonment of the vessel due to warlike operations insofar as benefits to crew members were concerned (R. 157-161). It was there provided that in such event *wages* and *emergency wages* would be paid until the licensed officers were repatriated to a Continental United States port, and that the employer should arrange for the repatriation of the men to such port. A union proposal for the payment of war bonus during repatriation was rejected (R. 161, 172). Consequently, the clause covering the consequences of internment, abandonment or destruction of the vessel contained no provision for the payment of war bonus in any respect.

A few weeks subsequent, war bonus disputes involving unions representing unlicensed personnel came before the National De-

fense Mediation Board, which issued its decision with recommendations for settlement on October 6, 1941 (R. 163, 287, 290, Ex. No. A (Bryan) 42). These recommendations were the basis for the fourth series of supplementary bonus agreements covering unlicensed personnel (R. 169, 170, 287, 290, Ex. No. A (Bryan) 47, 48, 50), which were immediately negotiated by such unions and the P.A.S.A. The recommendations of the National Defense Mediation Board were entirely silent concerning the consequences of internment, destruction or abandonment of the vessel. A provision covering these eventualities, however, was incorporated in these last mentioned supplementary bonus agreements; it was patterned after the provision contained in the uniform agreement of August 16, 1941, insofar as basic and emergency wages were concerned. The proposal to pay war bonus during repatriation, which was made and rejected in August, 1941, was incorporated in the internment provision of these agreements (R. 162). A few days later similar fourth series supplementary bonus agreements were negotiated between the P.A.S.A. and unions representing licensed personnel (R. 287, 290, Ex. No. A (Bryan) 49, 51). These agreements contained an internment provision patterned after that in the agreements governing unlicensed personnel. All of these agreements were operative during the voyage of *The President Harrison.*[11]

The pertinent parts of the agreement governing the Masters, Mates, and Pilots (R. 287, 290, Ex. No. A (Bryan) 49), which is representative of all the agreements, read as follows:

> "(1) This agreement shall become effective on all voyages shipping articles for which were entered into on or after August 16, 1941, and as to all such voyages and all subsequent voyages shall supersede said agreement of August 16, 1941, * * *

11. Some of these bonus agreements were negotiated before the shipping articles were opened, and others were negotiated afterwards. An examination of them shows that by express provision, all of them were made effective on all voyages shipping articles for which were entered on or after August 16, 1941 (R. 287, 290, Ex. No. A (Bryan) 47, 48, 49, 50, 51).

"(2) War risk areas wherein war risk bonuses shall be paid licensed officers are set forth as follows:

"Area I Trans-Atlantic voyages to Spain, Portugal, East, South or West Coasts of Africa, Red Sea, Persian Gulf, India, Iceland and Greenland.

"Area II Trans-Atlantic voyages to Russia (Archangel, etc.).

"Area III Trans-Pacific voyages to Russian (Vladivostok, Petropavlosk).

"Area IV Trans-Pacific voyages to Japan, Philippine Islands, China, Indo-China, East Indies, Malayan Peninsula. (Italics added).

"Area V Trans-Pacific voyages to New Zealand or Australia.

"Area VI Canada (Atlantic Coast).

"Subject to terms and conditions following, war bonuses shall be paid in the respective areas as above defined, as follows:

"Area I (a) 66⅔% of basic wages for the entire voyage; $100 for Suez or any other port which is subject to regular bombing, plus $5 per day for each day beyond five days that the vessel is in that port; and

(b) $45 for each port in the Red Sea and Persian Gulf not covered in Paragraph (a) supra.

"Area II 66⅔% of basic wages for the entire voyage, and $75 for each Russian port.

"Area III 66⅔% of basic wages after crossing the 180th meridian, westbound, until recrossing the same meridian eastbound, and $75 for each Russian port.

"Area IV 66⅔% of basic wages from the crossing of the 180th meridian, westbound, until recrossing the same meridian eastbound. (Italics added).

"Area V 66⅔% of basic wages from arrival of vessel in Suva or the crossing of the 180th meridian, westbound, until departure from Suva or crossing the 180th meridian eastbound.

"Area VI 25% of basic wages while vessel is north of 35 degrees of north latitude.

* * * * * * *

"(4) *In the event a vessel is interned,* destroyed or abandoned as a result of war operations and is unable to continue her voyage, basic wages and emergency wages specified in the collective bargaining agreement between the parties shall be paid to the date that members of the crew arrive in Continental United States ports and the employees shall be repatriated to a Continental United States port.

"*While employees* are in the *war zone* areas *described herein war bonuses shall also be paid to them* at the rate of 66⅔% of the said basic wages in Areas I to V inclusive, and 25% in Area VI. (Italics added).[12]

As stated previously petitioner contended that the rider to the shipping articles and those portions of the collective agreement just quoted should be construed together as constituting the entire contract of hire, and that this contract, properly construed, did not provide for the payment of war bonuses during internment on land.[13] Moreover, petitioner contended throughout this litigation that should the shipping articles and the collective agreements conflict concerning conditions of hire that the

12. The Marine Engineers Beneficial Association agreement (R. 287, 290, Ex. No. A (Bryan) 51), which governs the rest of the licensed personnel, is identical to the agreement quoted above. The corresponding provisions in the unlicensed personnel agreements are substantially the same as those quoted. An example is set forth in the Appendix.

13. Petitioner also contended that the shipping articles standing alone did not provide for war bonus during internment. The Court of Appeals held against petitioner. Petitioner believes this to be an error. However, petitioner also realizes that the Supreme Court seldom considers error in the construction of a single contract to be a substantial question reviewable on certiorari. For that reason, petitioner does not press this error as reason for granting certiorari. However, should this issue eventually become critical to the disposition of the cases, petitioner reserves the right to claim it as a basis for reversal.

latter should control, since they were collective bargaining contracts which an employer and his employees could not abrogate by their individual contracts (R. 260-61, 263-65).

The District Court held that the rider should be construed with the collective supplementary bonus agreements. It interpreted these *agreements* as not providing for war bonuses while the crew members were interned on land. On appeal, the Court of Appeals, relying on 46 U.S.C. § 676, held that the *shipping articles and attached riders,* properly construed, did allow for payment of war bonus while crew members were interned on land.

REASONS FOR GRANTING THE WRIT

The Court of Appeals, in holding that the individual contracts of employment contained in the shipping articles governed the respondents' rights to a war bonus, failed to give effect to operative collective bargaining agreements.[14] Petitioner asserts

14. Despite its allusions to the collective agreements, the Court of Appeals rested its decisions solely on its interpretation of the shipping articles. *First:* In the *Griffin* case, the Court conceded differences between the shipping articles and the collective bonus agreements in the rate at which the war bonus was to be computed. Yet it held that the lower rate contained in the articles was the controlling one, thus denying effect to an operative collective agreement. *Second:* In the *Agnew* case the Court of Appeals by its express language demonstrates that it did not construe the collective bargaining agreements standing alone. Its reference to these agreements was merely for the purpose of supporting its construction of the shipping articles. Close examination of the opinion shows this. After setting forth its construction of the articles the Court of Appeals referred to the collective agreements and stated: "Hence 1(a)III [collective agreement] construed in connection with paragraph 6 of the rider [articles], rationally should be read as * * *" 177 F.2d at 109. This statement positively demonstrates that the Court did not construe or consider the agreements independently; it construed the agreements by reference to and "in connection with" the rider. This was error. The provisions of the rider were not explanatory of collective agreements having industry-wide coverage. The shipping articles and attached rider apply only to those crew members aboard one vessel of a single employer. This individual contract could not and did not explain the meaning of collective agreements governing many other employees and their employers. While collective agreements are interpretive of and qualify individual contracts of hire, the reverse is not true. Therefore, it must be concluded, as confirmed by the

that this constitutes a disregard of applicable decisions of this Court, which interpret the N.L.R.A. as requiring collective bargaining agreements which contain maximum terms of employment to be recognized in lieu of conflicting individual contracts of employment.

Also, the Court of Appeals construes 46 U.S.C. § 676 as requiring the shipping articles to contain the exclusive contract of employment. In doing so, it has rendered a decision interfering with the process of collective bargaining which the N.L.R.A. intended to foster in the shipping industry, as well as in all industries affecting interstate commerce.

1. The Court of Appeals has erroneously given effect to individual contracts of employment when a collective bargaining agreement which had been negotiated by the representatives of the parties contained contrary provisions. The Court of Appeals concluded that the shipping articles required payment of war bonus during internment.[15] Petitioners contend that the fourth series of supplementary agreements which governed the parties only provided for a war bonus during a voyage in specified areas and not during internment on land.[16]

Court's express statement, that it based its decision on the shipping articles and attached rider and did not independently construe or give effect to the collective agreements, which petitioner contends it was obligated to do. *Third:* For presumably the same purpose of finding support for its interpretation of the articles, the Court in the *Griffin* case rearranged the provisions of the supplementary agreement so as to make them more consistent with its interpretation of the shipping articles. *Fourth:* All the opinions of the Court of Appeals ignore the evidence, with which the record is replete, that establishes the background in which the agreements were negotiated. This background, of course, was highly relevant to a proper interpretation of the agreements. For these reasons, petitioner emphatically contends that the opinions of the Court of Appeals in no sense rest on an interpretation of the collective bonus agreements; nor may the opinions be construed as an interpretation of these agreements, unless it be presumed that the Court of Appeals departed from the usual course of judicial procedure in its disposition of these cases. If this presumption is indulged, supervisory action by the Supreme Court would be required.

15. See note 13, *supra.*

16. The District Court made findings of fact and conclusions of law that support the interpretation of the fourth series of supplementary agreements contended for by the petitioner, which is not to allow war

In *Case Co. v. N. L. R. B.*, 321 U.S. 332, the Court held that an individual contract of employment did not free an employer from the duty to bargain and to recognize the resultant contract even if it were inconsistent with an individual contract of hire. This holding was compelled by the N.L.R.A. by which Congress endorsed the system of collective bargaining as the proper means of settling industrial disputes. The Court was mindful that individuals by their contracts may sometimes secure terms seemingly more advantageous than those obtainable collectively by the group. Nevertheless, it recognized that Congress believed the advantages to be gained from group action so offset such possibilities that the collective bargaining agreement must be enforced in preference to an individual contract. Thus, by giving effect to the shipping articles, an individual contract of employment, as the controlling agreement, the Court of Appeals has rendered a decision inconsistent with a controlling decision of the Supreme Court. The tendency of this decision to dissipate confidence in the collective bargaining process and the enforceability of contractual results therefrom, requires that this Court grant review and reassert the applicability of the *Case Co. v. N. L. R. B., supra,* principle.

It must be conceded that *Case Co. v. N. L. R. B., supra,* differs from the present cases in one respect. The benefits of the individual contract in that case flowed to the employer, whereas in the present cases they favor the employees. The Court, although expressing doubt as to whether this fact would require a different result, expressly reserved the question. Petitioner believes that the question thus reserved should be so decided here, and that the Court should hold that who is benefited by an individual contract of employment is irrelevant. To allow an individual

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bonus during internment (R. 388-390, 393). In a former case, the Court of Appeals agreed that these agreements did not allow war bonus during internment. See *Steeves v. American Mail Line, Ltd.* (C.C.A. 9th) 154 F.2d 24. Moreover, the interpretation contended for by petitioner is supported by the fact that basic wages and emergency wages are expressly made payable during internment. The war bonus provided by these agreements, however, was made payable only during "voyages." See also note 6, *supra.*

contract benefiting an employee to take precedence over a collective bargaining agreement would be to allow the employer to alter by his unilateral action terms of employment about which he is duty bound to bargain collectively with union representatives. The Court has expressly condemned such action as an unfair labor practice inconsistent with the purposes of the N.L.R.A. See *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U.S. 678; *May Department Stores Co. v. N. L. R. B.*, 326 U.S. 376, 384. The irrationality of concluding that an individual contract benefiting employees may be enforced, whereas those benefiting employers may not, is so clear that Mr. Justice Frankfurter, without discussion, last term stated:

> "Individual contracts, whether on more or less favorable terms than those obtained by the union, are barred." (Citing *Case Co. v. N. L. R. B., supra.*) *American Federation of Labor v. American Sash and Door Co., et al.*, 335 U.S. 525, 542, 552.

See also, *Lewellyn v. Fleming* (C.C.A. 10th), 154 F.2d 211, 214; cf. *Graham v. Brotherhood of L. F. & E.*, ... U.S. ....., 94 L.ed. 1, 5.

If it is not clear as petitioner firmly believes that *Case Co. v. N. L. R. B., supra,* prevents enforcement of individual contracts of hire, a substantial question involving the administration of the N.L.R.A. is, nevertheless, presented. One Supreme Court Justice, at least, and one Circuit Court have agreed with petitioner. If they are in error, it is proper that the Supreme Court clarify this confusion. If petitioner's contention is sound, the Court should correct the error made by the Court of Appeals.

2. The Court of Appeals erred in concluding that 46 U.S.C. § 676 requires shipping articles to contain the exclusive contract of employment.

Petitioner contends that the Court of Appeals erred in its interpretation of this statute. Although 46 U.S.C. § 676 states that the articles "be *deemed* to contain all the conditions of contract with the crew," petitioner contends that it does not *require* that all the terms of employment be so set forth. Moreover, the

statute should not be construed so that the articles are *deemed* to contain *all* conditions of employment in the face of an effective and a valid collective agreement prescribing *additional* conditions, especially when other federal statutes foster, and under certain conditions require, such collective agreements. In the event that a collective bargaining agreement has been concluded, petitioner contends it must be construed with the articles to constitute together the contract of employment.

Not to construe the shipping articles with the operative collective bargaining agreements would be to nullify these agreements, the rights and benefits they bestow, and the very purposes of the N.L.R.A.

Assuming Section 676 standing alone has been properly interpreted, the Court of Appeals erred in failing to consider the effect of the N.L.R.A. By this Act, Congress intended to establish the collective bargaining process as the fundamental technique of settling industrial disputes. Sec. 1. The coverage of the Act comprehends the shipping industry. Sec. 1, 2(6). The Court has so held. See *N. L. R. B. v. Waterman S. Corp.*, 309 U.S. 206. Petitioner contends that Congress has recognized the collective bargaining processes as additional and paramount protections for seamen, as well as for other workers, to those contained in 46 U.S.C. § 676. In the event of conflict, petitioner contends that the provisions of the later legislation should prevail. If section 676 has been properly interpreted by the Court of Appeals, any protection to seamen resulting from such interpretation should be limited to instances when hiring is not pursuant to a collective agreement. Otherwise 46 U.S.C. § 676 may serve to nullify collective agreements, thus hampering the administration of the N.L.R.A. and defeating its objectives. The Court has held that the manifest objective of that Act is to encourage the conclusion of collective agreements. *Consolidated Edison Co. v. N. L. R. B.*, 305 U.S. 197, 236. As a protection of such agreements, it has held that the Act contemplated a duty to reduce them to writing. See *H. J. Heinz Co. v. N. L. R. B.*, 311 U.S. 514, 523-526. It is inconceivable that such agreements should not

be enforceable by either party when dispute arises over their terms. Yet to hold that 46 U.S.C. § 676 bars enforcements of the collective bargaining agreement because the shipping articles are the exclusive contract would be the adoption of such conception.

At any rate, a substantial question involving the coordination of two federal laws, which may be in conflict, is presented. The importance of the question to the shipping industry, and consequently the national economy and security, is apparent. Whatever the ultimate determination, it is essential to the harmonious operation of the collective bargaining process that both sides of the negotiations be informed of the extent to which they may conclude differences by their contracts and acquire enforceable rights. Any doubt on this issue creates a psychological atmosphere hostile to negotiation and collective bargaining processes. The doubt created by the decision of the Court of Appeals should be dispelled. Only the Supreme Court may resolve the issue, and the writ of certiorari should be granted for the purpose of doing so.

3. Assuming that the Court agrees with petitioner on the two issues already presented, the exact meaning of the supplementary collective agreements becomes critical to the ultimate disposition of these cases. Petitioner realizes that the Supreme Court would normally not consider the interpretation of a contract a substantial question. However, when the contract has general applicability, the Court has in the past considered the interpretation of a contract of such importance. See *Cosmopolitan Shipping Co. v. McAllister*, ... U.S. ....., 93 L.ed. 1278, 1284-87; *Fink v. Shephard S. Co.*, ... U.S. ....., 93 L.ed. 1287. Petitioner believes that the fourth series of supplementary bonus agreements, negotiated as they were to cover all seamen employed by Pacific Coast ship operators in the first stages of the war, are of public importance. It is petitioner's conviction that the question of interpretation is adequately prepared for the Court's determination. The language of the applicable provisions is clear. The District Court has made adequate findings concerning the contracts, so that extraneous matter has already

been sifted out. Should recourse to evidence in the record be necessary, the Court has power to do so. See *Nye & Nissen v. United States,* ..... U.S. ....., 93 L.ed. 752. Consequently, if the Court grants certiorari in these cases, petitioner reserves the right to submit for the Court's determination, in its brief on the merits, the questions involved in interpreting contracts.

For the reasons stated herein, petitioner believes that substantial issues concerning the administration of the N.L.R.A., and the maintenance of harmonious labor-management relations in the shipping industry are presented. Petitioner respectfully prays that writ of certiorari issue in these cases.

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Of Counsel

In the Supreme Court of the United States

AMERICAN PRESIDENT LINES, LTD., a corporation, *Petitioner*, v. JAMES M. AGNEW, et al., *Respondents.*	Consolidated on Appeal
AMERICAN PRESIDENT LINES, LTD., a corporation, *Petitioner*, v. JOHN W. GRIFFIN, et al., *Respondents.*	
AMERICAN PRESIDENT LINES, LTD., a corporation, *Petitioner*, v. AUGUSTUS FEDERER, et al., *Respondents.*	

Brief in Support of Petition for Certiorari

Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Ninth Circuit entered in these cases on September 9, 1949, reversing the judgments of the District Court of the United States for the Northern District of California, Southern Division.

OPINIONS BELOW

The opinion of the District Court is reported at 73 F. Supp. 944. The initial opinions of the Court of Appeals are not reported (R. 414, 132*). Modifications of these opinions entered by the Court of Appeals are reported at 1949 A.M.C. 1007 (R.

*Reference is to record in *American President Lines, Inc. v. August Federer et al.*

421, 134*). A petition for rehearing was filed. The petition was denied, but the Court entered substantial additional modifications of its former opinions. The final opinions are reported at 177 F. 2d 107, 111 (R. 428, 135,* 48†).

JURISDICTION

The statement of jurisdiction set forth in the petition for writ of certiorari accompanying this brief is hereby incorporated as part of the brief. This brief in support of the petition for writ of certiorari is filed in accordance with Supreme Court Rule 38(2).

QUESTIONS PRESENTED

1. Does the National Labor Relations Act (N.L.R.A.) permit granting more advantageous terms of employment to employees under individual contracts of hire than are provided by concurrently applicable collective bargaining agreements containing maximum and not minimum terms?

2. Does Section 676, 46 U.S.C., which states that shipping articles "shall be deemed to contain all the conditions of contract," require holding that the shipping articles are the exclusive contract of employment to the exclusion of an operative collective bargaining agreement containing similar and other terms of employment?

3. Assuming that a collective bargaining agreement is an integral part of the contract of employment and governs in the event of conflict with an individual contract of hire, do the collective agreements herein involved provide for payment of war bonus while crew members of *The President Harrison* were interned by the Japanese on land?

STATEMENT OF THE CASE

The statement of facts contained in the petition for writ of certiorari are hereby incorporated and made a part of this brief.

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*Reference is to record in *American President Lines, Inc. v. August Federer et al.*

†Reference is to record in *American President Lines, Inc. v. John W. Griffin et al.*

ARGUMENT

I. The Court of Appeals has rendered a decision inconsistent with controlling Supreme Court decisions by giving effect to individual contracts of employment which conflict with operative collective bargaining agreements.

The Court of Appeals in its final decisions held, in effect, that the shipping articles alone governed the terms of employment of the crew members of *The President Harrison*.[1] It also held that the shipping articles required payment of a war bonus to respondents for that period during which they were interned on land by the Japanese. For the sake of argument, petitioner assumes that this interpretation of the shipping articles standing alone is correct.[2] However, petitioner contends that individual contracts consisting of the articles and the riders attached thereto may not be enforced because they conflict with operative collective bargaining agreements, the fourth series of supplementary bonus agreements. These agreements expressly require payment of a war bonus only in the "war zones described" therein, which are set forth as "Trans-Pacific voyages" to specified destinations in the Orient. Internment on land is clearly not included within the term "voyage."[3] By ordering payment of a war bonus according to the alleged tenor of the shipping articles, the Court of Appeals enforced individual contracts of employment between an employer and its several employees instead of operative collective bargaining agreements.

Which of these two contracts, the shipping articles or the supplementary collective agreements, should govern presents a substantial question in the administration of the N.L.R.A., 49 Stat. 449, 29 U.S.C. §§ 151 *et seq.* Petitioner believes that this question has been decided by the Court of Appeals in a manner which conflicts with applicable decisions of the Court.

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1. See note 14 in Petition, *supra.*
2. See note 13 in Petition, *supra.*
3. See notes 16, 6 in Petition, *supra.*

Congress adopted the N.L.R.A. to protect "the right of employees to organize and bargain collectively," so as to remove "sources of industrial strife and unrest" and to encourage "practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions. * * *" Sec. 1. To implement these purposes, a duty to bargain collectively with the representatives of employees was imposed upon employers. Sec. 8(5).[4] The Court has recognized that the manifest objective of the Act in providing for collective bargaining was the making of contracts between employers and labor organizations. See *Consolidated Edison Co. v. N. L. R. B.*, 305 U.S. 197, 236. As a reasonable protection of the collective bargaining process, the Court has held that the Act contemplated that agreements would be reduced to writing and signed by the parties. *H. J. Heinz Co. v. N. L. R. B.*, 311 U.S. 514, 523-526. It is inconceivable that such collective bargaining agreements, so reduced to writing and executed, are not to be given full force and effect, regardless of the conditions inserted in individual contracts of employment.

Indeed, the Court in *Case Co. v. N. L. R. B.*, 321 U.S. 332, held that individual contracts concerning terms of employment could not be enforced if they conflicted with agreements negotiated as the result of collective bargaining. See also, *Order of R. Telegraphers v. Railway Express Agency*, 321 U.S. 342. The Court likened the collective bargaining agreement to a tariff schedule; it explained that after the agreement was entered into the terms of employment were traded out, and individual hirings were necessary only to determine who should enjoy the contract benefits which could not be waived.

In answer to the argument that the individual workman may sometimes acquire more advantageous terms of employment than those obtained by the group, the Court stated:

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4. In this respect, the Labor Management Act of 1947, 61 Stat. 136, reaffirmed the original purposes of the N.L.R.A. by creating a concurrent duty for employee representatives to bargain with employers. Sec. 8(b)(3).

"The practice and philosophy of collective bargaining looks with suspicion on such individual advantages. Of course, where there is great variation in circumstances of employment or capacity of employees, it is possible for the collective bargain to prescribe only minimum rates or maximum hours or expressly to leave certain areas open to individual bargaining. But except as so provided, advantages to individuals may prove as disruptive of industrial peace as disadvantages. They are a fruitful way of interfering with organization and choice of representatives. * * * The workman is free if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result. We cannot except individual contracts generally from the operation of collective ones because some may be more individually advantageous." 321 U.S. at 338, 339.

The circumstances under which the fourth series of supplementary bonus agreements were negotiated call for full application of these principles. The supplementary bonus agreements were the result of: a history of collective bargaining extending over a considerable period; a deadlock; a submission of the controversy relating to war zones and rates of war bonus to the National Defense Mediation Board; a decision by that Board recommending new and increased bonus rates, defining the war zones where payable, and prescribing machinery for the future adjustment of such war bonus questions; and further collective bargaining culminating in the incorporation of the recommendations of the Board in collective bargaining agreements. The incorporation in the collective bonus agreements of machinery for the adjustment of future disputes particularly indicates an intent to fix maximum terms of employment, subject to change only by procedures prescribed within the framework of collective bargaining.

It must be conceded, however, that *Case Co. v. N. L. R. B., supra,* in its narrowest context only decided that individual

contracts favoring employers could not be enforced; it did not decide whether an individual contract favoring an employee more than the collective bargaining agreement was barred by the latter. Expressing doubt as to whether this fact should require a different result, the Court expressly reserved the question. Since the individual contract contained in the shipping articles favors the employees more than the collective agreements, that question is presented by these cases.

Petitioner contends that whether employee or employer is benefited by the individual contract is unimportant. To hold that a different result obtains when the employee is benefited would tend to nullify the Congressional purpose of encouraging collective bargaining. The Court has previously held that it was an unfair labor practice for an employer to grant wage increases without prior consultation with union representatives. See *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U.S. 678; *May Department Stores Co. v. N. L. R. B.*, 326 U.S. 376, 384. This unilateral action, even though a benefit to individual employees, was considered a serious threat to the process of collective bargaining. To allow individual seamen special advantages contained in the shipping articles of a single vessel is no less a threat to the operation of an area-wide bargaining system and to the protection afforded all seamen covered by the collective bargain. To decide that enforcement of conflicting shipping articles is not barred by the terms of industry-wide collective agreements is to conclude that the employer may bargain individually with employees whose rights have already been collectively determined.

The irrationality of such a conclusion is so patent that as recently as last term in his concurring opinion to *American Federation of Labor v. American Sash and Door, et al.*, 335 U.S. 525, 542, 552, Mr. Justice Frankfurter, without discussion, stated:

> "Individual contracts, whether on more or less favorable terms than those obtained by the union, are barred." (Citing *Case Co. v. N. L. R. B., supra.*)

See also, *Lewellyn v. Fleming* (C.C.A. 10th), 154 F.2d 211, 214. And just the other day the Court unanimously stated:

> "* * * the statute which grants the majority exclusive representation for collective bargaining purposes strips minorities within the craft of all power of self-protection for neither as groups nor as individuals can they enter into bargaining with the employers on their own behalf." *Graham v. Brotherhood of L. F. & E.*, ... U.S. ....., 94 L.ed. 1, 5.

Petitioner believes that *Case Co. v. N. L. R. B., supra,* required the Court of Appeals to hold that the fourth series of supplementary bonus agreements precluded enforcement of conflicting provisions in the shipping articles. The contrary holding impairs the proper functioning of the collective bargaining process endorsed by the N.L.R.A. If the holding of the Court of Appeals is allowed to stand, a natural reaction to be expected from management is an unwillingness to settle anything but minimum terms of employment by the collective bargaining process, since employees, but not employers, may gain advantages by individual contracts of hire. Such an attitude would only tend to increase differences already too frequently separating labor and management representatives at collective bargaining tables. This danger should be removed by the Court's granting the writ of certiorari and subsequent reversing of the decisions in these cases.

Petitioner firmly believes that the only rational application of *Case Co. v. N. L. R. B., supra,* requires a different result than that reached by the Court of Appeals. If the Supreme Court does not agree with petitioner on the clarity and effect of the *Case Co.* principle, a substantial question requiring its attention is, nevertheless, presented. Petitioner's contention is supported by at least one Supreme Court Justice and the Court of Appeals for the Tenth Circuit. This should indicate either that the petitioner is correct and the Court of Appeals for the Ninth Circuit is in error, or that sufficient confusion surrounds the question as to require clarification by the Court. The importance

of the question to the operation of national policies concerning labor-management relations is apparent. Both management and labor must know to what extent their differences may be conclusively settled by collective bargaining. Any doubt on this creates a psychological condition hostile to the proper functioning of the collective bargaining process. Consequently, it is imperative that the Court decisively settle to what extent collective bargaining agreements concerning conditions of employment circumscribe special advantages accruing from conflicting individual contracts of hire.

II. Assuming that the Court agrees with petitioners that the N.L.R.A. prevents the gaining of special advantages under individual contracts of hire over those provided in a collective agreement, a second question is presented of whether 46 U.S.C. § 676 qualifies this rule.

By express language, the N.L.R.A. applies to labor-management relations insofar as interstate and foreign commerce may be affected. Sec. 1, 2(6). The shipping industry is obviously an important segment of this commerce and, heretofore, the Court has determined that the N.L.R.A. is applicable to employment relations affecting it. See *N. L. R. B. v. Waterman S. Corp.*, 309 U.S. 206. It should follow, therefore, that the principles set forth in section I of this Brief are applicable to collective bargaining agreements negotiated by maritime unions and ship operators.

However, the Court of Appeals, in reaching its conclusion that the individual contract of hire and not the collective bargaining agreement controlled, relied on 46 U.S.C. § 676. The result of doing so was to qualify the rule of *Case Co. v. N. L. R. B., supra,* and to create a substantial question affecting collective bargaining in the shipping industry.

Section 676, 46 U.S.C., among other things, states:

> "* * * [shipping articles] shall be deemed to contain all the conditions of contract with the crew as to their services, pay, voyage, and all other things. * * *"

This provision is one of six rules contained in section 676 made applicable only to vessels bound on a foreign voyage. The rules relate to the functions of Collector of Customs and Consuls. The incidental provision dealing with the contents of shipping articles is not directive or mandatory; it states or describes what is deemed or presumed to be contained in shipping articles for purpose of the Consul's determination. There is no suggestion that additional conditions of employment could not be shown to and considered by the Consul. This limited effect is far removed from the requirement read into the provision by the Court of Appeals that all the terms of employment must be set forth exclusively in the articles. If Congress intended such a requirement it would have stated it as a mandate directly and not incidentally. Moreover, there is every reason to believe such a requirement would have been extended to vessels on intercoastal voyages, and not limited to those on foreign voyages.

Even if we assume that this statute was designed as a protective measure for seamen and that one of its purposes was to require all terms of employment to be set forth in shipping articles, it is significant that the statute predated the adoption of the N.L.R.A. It was adopted in an era when seamen were regarded as "deficient in that full and intelligent responsibilty for their acts which is accredited to ordinary adults. * * *" See *Robertson v. Baldwin*, 165 U.S. 275, 287. At best this statute could be interpreted as offering only minimum protection. Yet, by holding that the provisions of 46 U.S.C. § 676 were "controlling," the Court of Appeals has, in effect, held that the contract of hire contained in the shipping articles is exclusive.

Petitioner contends that reaching this conclusion on the basis of 46 U.S.C. § 676 is error. Assuming that the statute requires written agreements in the form of shipping articles, with specification to some extent of what they must contain, the statute in no sense requires that all the terms of employment governing crew members be set forth, or even referred to, therein. Nor does it preclude the parties from entering into other con-

currently effective and valid contracts governing employment conditions. Petitioner has emphatically contended that the statute does not nullify or preclude consideration of collective bargaining agreements covering crew members, which may govern the same, as well as different, conditions of employment as those required to be set forth in shipping articles. Examples of terms of employment that are normally specified in collective bargaining agreements but not in shipping articles, but which, nevertheless, are universally held operative and binding, include, among others, overtime provisions fixing regular and overtime hours and rates of pay; transportation rights; uniform, clothing, and meal allowances; vacation, welfare and pension plans; representative recognition; strike and lock-out prohibitions; holidays; working rules; grievance machinery; etc. Clearly, if the shipping articles were to contain all of these provisions, they would be unwieldy documents. This is particularly true where, as on the Pacific Coast, agreements with six different maritime unions are involved. If the object of 46 U.S.C. § 676 were to give notice to seamen at the time of hire of the terms of employment, it would be frustrated.

Nor would the process of collective bargaining be fostered by interpreting section 676 as requiring express reference to effective collective agreements in the shipping articles. Collective agreements are binding contracts and operative according to their own express terms. Their applicability does not and should not depend upon whether individual contracts of hire incorporate or fail to incorporate them by specific terms. In some situations the applicability of collective agreements is compelled by law, *e.g.*, N.L.R.A., irrespective of agreement by the parties. Otherwise, their applicability depends upon the operative effectiveness agreed upon by the collective bargaining representatives and stated in the collective agreement. Any other conclusion would allow dissident workers who are dissatisfied with the collective agreement to avoid it by refusing to sign articles expressly reaffirming the collective agreement either by incorporation by

reference or by restatement of its terms. The mere statement of such a result demonstrates the absurdity of assuming that reaffirmation of the collective agreement in the shipping articles is required by law, especially when Congress has carefully devised labor-management legislation for the express purpose of guaranteeing the collective bargaining process. Moreover, collective agreements and amendments thereof are customarily made applicable as of a given date to ships at sea as well as those commencing a voyage, so that reference thereto in articles would not be practicable or possible.

Petitioner contends that at most 46 U.S.C. § 676 could only be interpreted as requiring shipping articles to be construed together with collective bargaining agreements. See *Clayton v. Standard Oil Co. of New Jersey* (S.D. Tex.) 42 F. Supp. 734, 743. And, in case of ambiguity, the collective agreement should control.

However, assuming that 46 U.S.C. § 676 standing alone has been properly interpreted by the Court of Appeals, petitioner contends that enactment of the N.L.R.A. implicitly qualifies the earlier statute. This Act was conceived as stating a national policy fundamental for harmonious labor-management relations in the nation's industries. Consequently, in the event of conflict with prior existing law, that law should not be given the effect of hampering the collective bargaining process which the N.L.R.A. fostered.

A conflict between the N.L.R.A. and 46 U.S.C. § 676, as interpreted by the Court of Appeals, is inevitable, as this litigation demonstrates. The N.L.R.A. advanced the modern notion that workingmen by organizing could strengthen their bargaining position and, by engaging in the collective bargaining process, could participate in determining what terms of employment would be appropriate. No class of workman was excepted from this privilege. The strengthening of democratic institutions, as well as improvement in the status of workers, could be hoped for from participation in this process. This concept was diametrically opposed to the attitude upon which the earlier statute

rested. It would be highly improper to interpret 46 U.S.C. § 676, which at most could offer only minimum protection, so as to cut down the comprehensive protection offered by the N.L.R.A.

Such a result is unnecessary. If section 676 can properly be interpreted as it was by the Court of Appeals, any protection to seamen resulting from such interpretation should be limited to hirings not made pursuant to a collective agreement. However, when seamen have availed themselves of the more comprehensive protections obtainable by participation in the collective bargaining process and hiring is pursuant to a collective agreement, a different result is necessary. Effect should be given to the agreements their representatives have made for them (the fourth series of supplementary bonus agreements in this case), even if in conflict with the shipping articles. To hold otherwise would be to nullify a fundamental purpose of the N.L.R.A., for, as stated previously, a manifest objective of the Act was the making of such agreements.

One danger of holding that the shipping articles are the exclusive contract of hire is that rights secured by seamen through more beneficial provisions of a collective agreement would not be enforceable. The *Griffin* case, in one respect, is an example of this danger. The collective bargaining agreement therein provided that the war bonus be computed at a higher rate than that specified in the shipping articles. Nevertheless, the Court of Appeals held that the lower rate was the controlling one because of its conclusion that 46 U.S.C. § 676 required that the shipping articles be the exclusive contract of hire. Thus, the seamen are deprived of a fruit of their collective bargaining, under the guise that they are being protected.

Furthermore, this solicitous attitude is not adjusted to present reality. Statistics are unnecessary to establish the fact that there has been a rapid growth of labor organizations in recent years. As recently as last term, the Court had occasion to hold that states could prevent union activity creating imminent threats of clear and present danger to society, because of the power of the

unions involved. See *Giboney v. Empire Storage Co.*, ... U.S. ....., 93 L.ed. 649, 657. Throughout the country, and particularly in the Pacific Coast area, seamen have formed organizations which are sharing in weaving the social fabric. District Judge Goodman was acutely aware of these facts and, in his opinion in these cases, stated:

> "Rules of admiralty law of this nature [46 U.S.C. § 676] spring from the days when the seaman stood alone and when his need for legal protection in arriving at a fair contract of hire was very great. * * * However, the legal protection so established arose from and was based on need. In good reason, the legal right thereto should be commensurate with and limited to such need. Today in the employer-employee relationship the position of the workman, and seaman as well, has become more fully equalized by force of his legally guaranteed right of collective bargaining." 73 F. Supp. at 948.

Concomitant with this growth of power should be the assumption of responsibility, which would require employees to respect the agreements made for them by their representatives. Employers obligated to bargain collectively should be protected by the agreements reached from pressure of individual workers to grant more concessions in individual contracts of hire.

Finally, the decision of the Court of Appeals, if allowed to stand, may be more effective as a detriment to the shipping industry than as a source of benefit to a small group of seamen securing a more generous war bonus which was not allowed thousands of persons similarly situated.[5] The Court may take judicial notice of the fact that the relationship between ship operators and the maritime unions on the Pacific Coast has been strained, indeed bitter, until most recently. The P.A.S.A. was organized to deal with what were gradually realized to be area,

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5. By enactment of The War Claims Act of 1948, as amended, 62 Stat. 1240, 50 U.S.C. App. §§ 2001 *et seq.*, Congress provided procedures whereby all internees would receive specified allowances. Respondents have already received allowances in excess of those so provided. See also note 6 in Petition, *supra.*

and not local, problems. Ship operators, as well as unions, benefited from this arrangement, and the collective bargaining process was accepted as essential to harmonious labor-management relations in the Pacific Coast shipping industry.[6] See *Waterfront Employers Assn. of the Pacific Coast*, 71 N.L.R.B. 14 (1946). The continuance of this attitude is directly related to the extent to which reliance on the collective bargaining process is well placed. The Court of Appeals' decision suggests that this reliance is misplaced, if the shipping articles, and not the collective bargaining agreements, are the exclusive contract of hire. The effect of this decision on the complex of psychological factors involved in the collective bargaining process is immeasurable.[7] For this reason, the questions raised by these cases have importance beyond the individual cases.

In summary, petitioner believes that the misinterpretation of 46 U.S.C. § 676, nullifying the purpose of the N.L.R.A., presents a substantial question requiring the attention of the Supreme Court. Assuming that there is doubt as to the exact meaning of section 676, petitioner contends that this in itself presents a substantial question involving the coordination of two federal laws. The significance of this question to an important national industry requires its resolution by the Supreme Court.

III. The interpretation of the fourth series of supplementary

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6. The importance of this industry-wide bargaining for the maintenance of peaceful labor relations is summarized in the remarks of Senator Wayne Morse, a former waterfront arbitrator, during the debates on the 1947 Labor-Management Act. He discusses the successes achieved by use of industry-wide bargaining in Pacific Coast industries, including the shipping industry, and he points out the efforts of employers to protect this right to engage in industry-wide bargaining from being outlawed. 93 Cong. Rec. 1900-1901, 1904-1910. The Act did not outlaw industry-wide bargaining.

7. Recently the P.A.S.A. leadership has been placed in the hands of a group of progressive ship operators, who have adopted a more conciliatory view of the rights of labor and respectful attitude for the collective bargaining process. See Kerr and Fisher, *Conflict on the Waterfront*, Atlantic Monthly (Sept. '49) 17-23. Maintenance of this leadership depends in large part on whether the collective bargaining process will work as anticipated.

bonus agreements presents a substantial question requiring the attention of the Supreme Court.

Assuming that the Court agrees with petitioner on the two issues already presented, the exact meaning of the fourth series of supplementary bonus agreements becomes critical to the ultimate disposition of the case. In its prior argument, petitioner has assumed that these agreements did not provide for a war bonus during internment. It is believed that this assumption is supported by the plain language, and the history of the negotiations.[8] The District Court agreed with petitioner (R. 388-390, 393). Because of the manner in which the Court of Appeals disposed of these cases, it did not give extended consideration to these bonus agreements.[9] Petitioner asks that the Supreme Court render an authoritative interpretation of these agreements at the time it disposes of the general laws questions.

Petitioner realizes that the Supreme Court does not generally consider the interpretation of contracts a question of such substance as to warrant its attention. However, it has jurisdiction to do so. And, when a contract has general applicability, the Court in the past has considered the question of interpretation one of public importance. See *Cosmopolitan Shipping Co. v. McAllister*, ... U.S. ....., 93 L.ed. 1278, 1284-87; *Fink v. Shephard S. Co.*, ... U.S. ....., 93 L.ed. 1287. Petitioner believes that the fourth series of supplementary bonus agreements, negotiated as they were to cover all seamen employed by Pacific Coast ship operators in the early stages of the war, have such public importance. Unnecessary litigation could be avoided by a Supreme Court ruling.[10] It is petitioner's belief that questions involved in an interpretation of the contracts are ripe for the Court's determination. The language of the applicable provi-

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8. See notes 16, 6 in Petition, *supra*.

9. See note 14 in Petition, *supra*.

10. Apart from these cases, these same agreements have already been the source of litigation in two other cases. See *Steeves v. American Mail Line, Ltd., supra; Armstrong et al. v. Matson Navigation Co.* (N.D. Cal.) ..... F. Supp. ....., now pending on appeal.

sions is clear; the District Court has made adequate findings concerning the contracts, so that extraneous matter has already been sifted out. Although it is unlikely that it will be necessary, the Court has power to examine evidence contained in the record. See *Nye & Nissen v. United States*, ... U.S. ....., 93 L.ed. 752. Should the Court be inclined to grant the writ of certiorari limited to consideration of the first two questions raised in this brief, petitioner asks that it reserve judgment on the importance of the Court's interpreting these supplementary bonus agreements until the brief on the merits is submitted.

For the reasons stated herein, petitioner believes that substantial issues concerning the administration of the N.L.R.A. and the maintenance of harmonious labor-management relations in the shipping industry are presented. Petitioner respectfully prays that the writ of certiorari issue in these cases.

IRA S. LILLICK,
Proctor for Petitioner.

JAMES L. ADAMS,
LILLICK, GEARY, OLSON,
ADAMS & CHARLES,
Of Counsel.

(Appendix follows)

APPENDIX

A. Statutes Pertinent to This Litigation.

1. National Labor Relations Act, 49 Stat. 449, 29 U.S.C. §§ 151 *et seq.*:

"§ 151. Findings and declarations of policy

* * * * * * *

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

* * * * * * *

"§ 152. Definitions

* * * * * * *

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same

State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * * *

"§ 158. Unfair labor practices by employer defined

* * * * * * *

"(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title."

2. 46 U.S.C. § 676:

"The following rules shall be observed with reference to vessels bound on any foreign voyage:

* * * * * * *

"Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping articles containing the names of the crew, which shall be written in a uniform hand, without erasures or interlineations.

"Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance."

B. Pertinent Portions of Rider Attached to Shipping Articles Governing the Unlicensed Personnel (Ex. No. 1).

"1. The American President Lines agrees to pay [a war bonus] to the unlicensed crew of the *S.S. President Harrison,* Voyage 55, as follows:

"2. The monthly basic wages as shown in the following agreements between the Pacific American Shipowners Association and the Unions are to be used as the basis for payment of this increase:

Sailors' Union of the Pacific	Effective Oct. 10, 1939
Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association	Effective Oct. 1, 1941
Marine Cooks and Stewards' Assn. of the Pacific Coast	Effective July 5, 1940

"3. To all employees entitled to receive basic wages of $120.00 per month or less under said Agreement, the sum of $80.00 per month.

"4. To all employees entitled to receive in excess of $120.00 per month under said agreement, 66⅔% of such basic monthly wage.

"5. This [war bonus] to apply from the crossing of the 180th meridian westbound until crossing the 180th meridian eastbound.

"6. In the event the vessel is interned, destroyed or abandoned as a result of war operations and is unable to continue her voyage, basic wages and emergency wages specified in the collective bargaining agreement between the Pacific American Shipowners Association and the Unions shown above shall be paid to the date the members of the crew arrive in a Continental United States port and the employees shall be repatriated to a Continental United States port. War bonuses at the rates specified in paragraphs 3 and 4 hereof shall be paid while employees are in the war zones defined herein."

C. Pertinent Portions of Supplementary Bonus Agreement Negotiated by the P.A.S.A. and the Sailors' Union of the Pacific (Ex. No. A (Bryan) 47).

The following is set forth as a collective bonus agreement representative of all those governing unlicensed personnel.

"NOW, THEREFORE, It is agreed that the said recommendations of the National Defense Mediation Board are

hereby accepted by the parties hereto and in pursuance thereof the parties do agree as follows:

"1. The following war bonus rules shall govern the parties hereto—

"(a) There shall be five war risk zones; namely:

"I. Trans-Atlantic voyages to Spain, Portugal, East, South or West Coasts of Africa, Red Sea, Persian Gulf, India, Iceland and Greenland. (Whole voyage; except that if any vessel continues eastbound to United States ports via India and the Pacific Ocean said bonus rates for such area will continue until the vessel passes the 180th Meridian, eastbound, and thereafter no further bonuses will be payable.)

"II. Trans-Atlantic voyages to Russia (Archangel etc.) (Whole voyage)

"III. Trans-Pacific voyages to Japan, Philippine Islands, China, Indo-China, East Indies, Malayan Peninsula. (After crossing the 180th Meridian westbound, until recrossing the same Meridian eastbound.) (Italics added)

"IV. Trans-Pacific voyages to New Zealand or Australia. (From arrival of vessel in Suva or the crossing of the 180th Meridian, westbound, until departure from Suva or crossing the 180th Meridian eastbound.)

"V. Canada (Atlantic Coast). (While vessel is north of 35 degrees of north latitude when bound to or from a Canadian port.)"

* * * * * * *

"In the event a vessel is interned, destroyed or abandoned as a result of war operations and is unable to continue her voyage, basic wages and emergency wages specified in the collective bargaining agreement between the parties shall be paid to the date the members of the crew arrive in a Continental United States port and the employees shall be repatriated to a Continental United States port. *War bonuses at the rates* specified in subdivision (b) of paragraph 1 hereof shall *be paid while employees are in the war zones defined herein."* (Italics added)

* * * * * * *

"5. During the period of these recommendations there shall be in connection with and on account of war bonus issues, no lockout, strike, slow-down, or like action by either owners or men represented by the parties hereto.

"6. The provisions of this agreement shall be effective on all voyages shipping articles for which were entered on or after August 16, 1941 or upon any voyage to which the provisions herein are made applicable by special agreement or rider attached to shipping articles."

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1949

Nos. 581 and 582

AMERICAN PRESIDENT LINES, LTD., (a corporation),
Petitioner,

vs.

JAMES M. AGNEW, et al.,
Respondents.

AMERICAN PRESIDENT LINES, LTD., (a corporation),
Petitioner,

vs.

JOHN W. GRIFFIN, et al.,
Respondents.

CONSOLIDATED ON APPEAL

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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Subject Index

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Statement	2
1. Certiorari should be denied for the reason that the petition does not present questions whose solution will have immediate importance beyond the particular facts and parties	6
2. Certiorari should not be granted to disturb the reasonable construction given by the court of appeals to the riders prepared by petitioner and forming part of the shipping articles	7
Conclusion	8

Table of Authorities Cited

Cases	Page
Magnum Import Co. v. Coty, 262 U.S. 159	6
Mason v. Texas Co., CA 1, 171 F.2d 559, certiorari denied May 31, 1949, 337 U.S. 915, 69 S.Ct. 1156	4
Montoya v. Tidewater-Associated Oil Co., CA 2, 174 F.2d 607, certiorari denied October 17, 1949, 70 S.Ct. 69	4
Steeves v. American Mail Lines, Ltd., CA 9, 154 F.2d 24	4
Statutes	
28 U.S.C., sec. 1354 (1)	2

Subject Index

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BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinion of the District Court is reported as 73 F. Supp. 944. R#581, 366-382. The opinions of the Court of Appeals are reported as 177 F.2d 107, and 177 F.2d 111. R#581, 428-434; R#582, 46-51.

JURISDICTION.

In each case the Court of Appeals entered judgment, as amended, on September 9, 1949. R#581, 426-427; R#582, 42-43. Jurisdiction of this Court is invoked under the Act of June 25, 1948. 28 U.S.C., sec. 1354 (1).

QUESTIONS PRESENTED.

1. Whether the petition presents questions whose solution will have immediate importance beyond the particular facts and parties.

2. Whether this Court should disturb a reasonable construction given by the Court of Appeals to riders prepared by petitioner and forming part of shipping articles.

STATEMENT.

Respondents are seamen who were members of the crew of the President Harrison when it sailed from San Francisco for the Orient on October 17, 1941. Pet. 3-4. The Japanese captured the vessel and crew west of the 180th meridian on December 8, 1941. Pet. 3-4.

Respondents were interned on the vessel until March of 1942. R#581, 212-213. They were then interned by the Japanese on land west of the 180th meridian, some until August 15, 1945, others until September 15, 1945. R#581, 8; R#582, 7.

The shipping articles of the President Harrison contained riders (R#581, 376-378), prepared by the shipowner (R#581, 303, 355), petitioner herein, whereby the shipowner promised and agreed to pay respondents additional wages at stipulated rates, termed "emergency wage increase" or "war bonus" (R#581, 386), for the period of internment if they were interned west of the 180th meridian. The Court of Appeals held that these riders, reasonably construed, entitled respondents to war bonus, at the rates stipulated, for the period they were interned by the Japanese on sea or land west of the 180th meridian. 177 F.2d 107, R#581, 428-434; 177 F.2d 111, R#582, 46-51. For purposes of its petition herein, petitioner concedes that construction to be a reasonable one. Pet. 21. Upon that construction the Court of Appeals reversed the final decree of the District Court denying respondents such war bonus, but affirmed that part of the decree denying respondents maintenance after capture of the vessel. R#581, 426-427; R#582, 42-43. It denied the shipowner's petition for rehearing. It granted in part the petition of respondents to modify or amend the judgments and allowed respondents interest and costs.

The case of the President Harrison is one of the very few cases wherein an American merchant vessel

sailing for the Orient shortly before Pearl Harbor was captured by the Japanese in the Orient or enroute thereto after Pearl Harbor. In the uncertain and unsettled days with ever-threatening emergencies and hazards preceding Pearl Harbor, riders forming parts of shipping articles and stipulating for war bonus were widely variant. An illustration is furnished by *Steeves v. American Mail Lines, Ltd.*, CA 9, 154 F.2d 24. All these variant riders, including riders worded similarly to those here involved, became obsolete after Pearl Harbor and the creation of the Maritime War Emergency Board on December 18, 1941. Riders stipulating for war bonus then became standardized and were made subject to the supervision, control, and decisions of the Board. On at least two occasions this Court has denied certiorari in cases involving MWEB riders. *Mason v. Texas Co.*, CA 1, 171 F.2d 559, certiorari denied May 31, 1949, 337 U.S. 915, 69 S.Ct. 1156; *Montoya v. Tidewater-Associated Oil Co.*, CA 2, 174 F.2d 607, certiorari denied October 17, 1949, 70 S.Ct. 69. A construction by this Court of the obsolete and individually worded riders here involved could have no possible importance beyond the particular facts and parties involved.

Petitioner won the war bonus issue in the District Court on the theory that the riders it prepared were valid and enforceable but ambiguous. R#581, 368-370. Petitioner adhered to that theory in the Court of Appeals and lost. R#581, 423-426; R#582, 49-51. In questing certiorari it now discards that theory and advances a new and different theory. The actual

ground of the petition is obvious. It sifts down to a plea that the riders violated collective bargaining agreements between petitioner and labor unions whereof respondents were members. Although petitioner prepared those riders and thereby induced respondents to accept employment and sail on petitioner's vessel to internment by the Japanese for approximately three years and nine months, petitioner now asks this Court to grant certiorari and relieve it from liability for war bonus on the theory that the promises and agreements it made in the riders to pay war bonus reflected unfair labor practices on its part and were therefore invalid and unenforceable. In support of this new and different theory petitioner fashions arguments around labor law decisions by this Court and other courts wherein questions of unfair labor practices were considered and determined. But the issues before the Court of Appeals in the present case did not require the consideration or determination of questions of that type. Nor did the Court of Appeals attempt to decide them. Nor can it be said that the decisions herein are at all in conflict with any of the labor law decisions invoked by petitioner. The petition for certiorari therefore presents the situation where a party defeated in the Court of Appeals on the issues there raised, considered, and determined is merely seeking another hearing in the Supreme Court for the purpose of raising new and different issues.

1. CERTIORARI SHOULD BE DENIED FOR THE REASON THAT THE PETITION DOES NOT PRESENT QUESTIONS WHOSE SOLUTION WILL HAVE IMMEDIATE IMPORTANCE BEYOND THE PARTICULAR FACTS AND PARTIES.

In *Magnum Import Co. v. Coty,* 262 U.S. 159, it was said at page 163:

> "The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first to secure uniformity of decision between those courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing."

More recently, these principles governing certiorari were repeated and amplified by the Chief Justice in his address before the American Bar Association on September 7, 1949. 70 S.Ct. XIII, XIV-XV.

Petitioner, as well as respondents, submitted to the Court of Appeals the issue whether the terms of the riders were self-sufficient to entitle respondents to the war bonus they claimed. Upon a reasonable construction of the riders the Court of Appeals ruled against petitioner. The actual scope of the decisions was a determination of the simple question of what construction was to be accorded somewhat novel contracts between private parties. Petitioner concedes the general rule that a question of that character does not warrant certiorari. Pet. 17, 33. The applicability of the general rule is particularly indicated here for, as

earlier pointed out, the riders involved and construed were of a type that became obsolete after Pearl Harbor and the creation of the Maritime War Emergency Board on December 18, 1941, and their construction now can have no possible importance beyond the particular facts and parties involved.

---

2. CERTIORARI SHOULD NOT BE GRANTED TO DISTURB THE REASONABLE CONSTRUCTION GIVEN BY THE COURT OF APPEALS TO THE RIDERS PREPARED BY PETITIONER AND FORMING PART OF THE SHIPPING ARTICLES.

The theory of petitioner at the trial and on appeal was that the riders it prepared were valid and enforceable but ambiguous. As the Court of Appeals, responsive to the issues it was asked to decide, gave a reasonable construction to the riders, it is obvious under the general rule previously mentioned that certiorari should not be granted to disturb that construction.

For the purposes of certiorari petitioner has discarded its former theory and now advances a new and contrary theory. Petitioner argues for the first time in the petition herein that the riders it prepared reflected unfair labor practices on its part in violation of collective bargaining agreements to which it was party and that the riders were therefore invalid and unenforceable. On a reconstructed case pursuing this new and contrary theory and question of labor law it suggests, petitioner asks this Court to disturb the reasonable construction given the riders by the Court of

Appeals and declare the riders invalid and unenforceable. On that new and contrary theory, asserts petitioner, the decisions of the Court of Appeals herein are impliedly in conflict with labor law decisions of this Court respecting unfair labor practices.

Both the scope and the objective of the petition herein are obvious: petitioner discards the case it made out in the Court of Appeals whereby issues were submitted to that court for decision and decided on the theory that the riders were valid and enforceable; on a reconstructed case petitioner is merely seeking another hearing, this time before the Supreme Court, wherein it may urge its new and contrary theory that the riders were invalid and unenforceable. Clearly, certiorari is not merited under these circumstances.

CONCLUSION.

Respondents therefore respectfully submit that the petition for a writ of certiorari should be denied.

Dated, San Francisco,
March 20 1950.

ALBERT MICHELSON,
Counsel for Respondents.

HERBERT CHAMBERLIN,
Of Counsel.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1949

No. 583

AMERICAN PRESIDENT LINES, LTD.,
Petitioner,

vs.

AUGUSTUS FEDERER, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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Subject Index

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statement of the case	2
Argument	4
I.	
General principles governing the issuance of writs of certiorari compel a rejection of the instant application	4
II.	
The decision of the Court of Appeals is not in conflict with any applicable decision of this court	7
III.	
Insofar as general maritime principles govern this case, the decision of the Court of Appeals should not be disturbed by this court	13
Conclusion	16

Table of Authorities Cited

Cases	Pages
Aguilar v. Standard Oil (1943), 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107, 1943 A.M.C. 451	14
Allen Bradley Co. v. Local Union No. 3, Intern. Broth. of Elect. Workers (1945), 325 U.S. 797, 65 S.Ct. 1533, 89 L.Ed. 1939, rehearing den. 66 S.Ct. 11	8
American Federation of Labor v. American Sash and Door, 335 U.S. 538, 69 S.Ct. 260	12
Cosmopolitan Shipping Co. v. McAllister (1949), 337 U.S. 783, 93 L.Ed. 1278	15
Fink v. Shephard SS Co. (1949), 337 U.S. 810, 93 L.Ed. 1287	15
Forsyth v. Hammond (1897), 166 U.S. 506, 41 L.Ed. 1095, 17 S.Ct. Rep. 665	5
Garrett v. Moore-McCormack Co. (1942), 317 U.S. 239, 87 L.Ed. 239	13
J. I. Case Co. v. National Labor Relations Board (1944), 321 U.S. 332, 64 S.Ct. 576, 88 L.Ed. 762	7, 8
N.L.R.B. v. Fansteel Metallurgical Corp. (1939), 306 U.S. 240, 59 S.Ct. 490, 83 L.Ed. 627, 123 A.L.R. 599	8
N.L.R.B. v. Pennsylvania Greyhound Lines (1938), 303 U.S. 261, 58 S.Ct. 571, 82 L.Ed. 831, 115 A.L.R. 307	9
Panama Railroad Co. v. Johnson (1924), 264 U.S. 375, 68 L.Ed. 748, 1924 A.M.C. 551	13
Re Lau Ow Bew (1891), 141 U.S. 583, 35 L.Ed. 868, 12 S.Ct. Rep. 43	4
Re Woods (1892), 143 U.S. 202, 36 L.Ed. 125, 12 S.Ct. Rep. 417	4
Republic Aviation Corp. v. N.L.R.B. (1945), 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 557, 157 A.L.R. 1081, rehearing den. 65 S.Ct. 1401, 325 U.S. 894, 89 L.Ed. 2005	8

Page

Socony Vacuum Oil Co. v. Smith (1939), 305 U.S. 424, 59 S.Ct. 262 14

Steeves v. American Mail Lines, Ltd. (C.A. 9), 154 Fed. (2d) 24 6

"The Osceola" (1903), 189 U.S. 158, 47 L.Ed. 760, 23 S.Ct. 483 13

Young v. American SS Co. (1882), 15 Otto 41, 26 L.Ed. 966 11

Statutes

Act of June 25, 1948, 28 U.S.C. 1254(1)..... 2

In the Supreme Court
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinion of the District Court is reported at 73 Fed. Supp. 944 (Record *Agnew* case, 366-382.) (The instant case was consolidated on trial and appeal in the Courts below with *American President Lines, Ltd., Petitioner v. James M. Agnew, et al.,* No. 581; and *American President Lines, Ltd., Petitioner v. John W. Griffin, et al.,* No. 582, this Term.) The opin-

ions of the Court of Appeals are reported: *Agnew* case, 177 Fed. (2d) 107; *Federer* and *Griffin* cases, 177 Fed. (2d) 111; and are found in the Record, *Agnew* case 428-434; *Federer* case, 134-137.

JURISDICTION.

In this case, together with the *Agnew* and *Griffin* cases, the Court of Appeals for the Ninth Circuit entered judgment as amended on September 9, 1949. The jurisdiction of this Court is asserted under the Act of June 25, 1948, 28 U.S.C. 1254(1).

QUESTION PRESENTED.

Does this case present issues calling for the issuance of a writ of certiorari?

STATEMENT OF THE CASE.

Respondents in the *Federer* case are seamen who were members of the Stewards Department of the SS President Harrison, an American steam vessel, which departed the port of San Francisco for the Orient on October 15, 1941. During her voyage the late war occurred, and the vessel and her crew were captured west of the 180th meridian by the Japanese on December 8, 1941. The vessel's crew were interned on the vessel until March of 1942, and thereafter in-

terned by the Japanese on land west of the 180th meridian, where they remained until the close of the war. On liberation they were repatriated to the United States, some on August 15, 1945, and some thereafter.

The shipping articles for the voyage contained riders which were prepared by the shipowner. One rider covered the licensed crew, which problems are presented in the *Griffin* case; and the other rider covered unlicensed seamen, covering the respondents in this and the *Agnew* case.

By the riders to these shipping articles the shipowners agreed to pay in addition to base wages certain war bonuses for the period that the seamen were west of the 180th meridian.

The Court of Appeals held that these riders reasonably construed entitled the seamen to war bonus during all of the time that they were interned during the war west of the 180th meridian, whether they were on land or sea during such periods of internment.

In the District Court the shipowner argued that the riders to the shipping articles which it had prepared were ambiguous, and that reference to extrinsic evidence was necessary to clear up such ambiguity. The shipowner argued that certain supplementary bonus agreements between the maritime unions and the shipowner should be construed together with the riders and that if this was done a conclusion was required that bonus was not payable to the seamen west of the 180th meridian while interned on land.

The District Court agreed with this argument, but on the seamen's appeal the Court of Appeals rejected it and held that the riders to the shipping articles were not ambiguous; that if they were, the ambiguity must be resolved against the shipowner which prepared them; that the riders and articles should be construed consonant with traditional principles of liberality toward seamen's rights; and that a fair construction of the articles with riders attached and the supplementary bonus agreements impelled only the conclusion that bonus was payable to the seamen while interned west of the 180th meridian, whether on land or sea.

It is this construction of the contract between the parties that petitioner shipowner now seeks to have reviewed by this Court on certiorari.

ARGUMENT.

I.

GENERAL PRINCIPLES GOVERNING THE ISSUANCE OF WRITS OF CERTIORARI COMPEL A REJECTION OF THE INSTANT APPLICATION.

This Court has said that the power to issue certiorari will be exercised sparingly and only when questions of gravity and importance are involved. *Re Lau Ow Bew* (1891), 141 U. S. 583, 35 L. Ed. 868, 12 Sup. Ct. Rep. 43; *Re Woods* (1892), 143 U.S. 202, 36 L. Ed. 125, 12 Sup. Ct. Rep. 417.

The writ will be issued only when demanded by the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a state, or some matter affecting the interests of the nation in its internal or external relations. *Forsyth v. Hammond* (1897), 166 U.S. 506, 41 L. Ed. 1095, 17 Sup. Ct. Rep. 665.

To the same effect, Supreme Court Rule 38, 5(b).

Trimmed of all the verbiage and specious argument contained in the petition for the writ, this case resolves itself down to a controversy between petitioner shipowner and respondent seamen concerning the construction of a contract under which the crew embarked on a voyage back in 1941. The contract in question was for this particular voyage and for no other. The problem presented in this case will end with the conclusion of the instant litigation. There is here presented no question of general law which can have importance beyond the confines of this controversy or the interests of these parties.

During the days that preceded the late war many vessels departed on foreign voyages into dangerous waters, and special agreements between crews and shipowners governed those ventures. In almost all of those cases the voyages were completed, the seamen compensated, the ventures concluded. In several cases the vessels either fell into the hands of the enemy and were destroyed or were captured and the crews interned.

Realizing that they were going into dangerous areas, the crew of the President Harrison, speaking through their unions and collective bargaining representatives—in the instant case the National Union of Marine Cooks & Stewards for the Stewards Department—requested and obtained special riders to the articles calling for payments of money commensurate with the risk which the crew took. In the cases of other vessels comparable agreements were made. Things were unsettled and insecure in those days, and special agreements which governed individual voyages were entered into for the purpose of meeting the contingencies which were contemplated. In almost all cases the contingencies did not occur, but in the case of the President Harrison the contingency occurred.

The men being interned during the war by the Japanese, on their repatriation to San Francisco demanded that they be paid wages and war bonus as called for by the articles and riders thereto. The shipowner refused to pay war bonus and the instant litigation ensued. In only several other cases was the problem litigated. One of those was *Steeves v. American Mail Lines, Ltd.*, (C.A. 9), 154 Fed. (2d) 24, which was resolved in favor of the seamen by the very same judge of the Court of Appeals who decided the instant war bonus question in favor of the seamen in this case.

The problem presented here is both obsolete and narrow and involves only the contest between these litigants as to the construction of the contract. That

contract having been construed by the Court of Appeals in favor of the seamen, there is no basis whatever calling for review in this Court. The shipowner concedes that if there is here involved only a question of contract construction this Court will not issue certiorari. (Petitioner's Brief, p. 17.) The question of contract construction is the only question presented.

II.

THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH ANY APPLICABLE DECISION OF THIS COURT.

Petitioner argues that involved here is a question of the application of certain collective bargaining agreements between the unions which represented the crews and the shipowner. It is argued by the shipowner that the seamen in this case have made individual contracts of hire superior to that called for in the collective bargaining (supplementary bonus) agreements, that therefore the collective bargaining agreements are rendered nugatory, and it follows that the collective bargaining process is so disturbed as to call for review and correction by this Court.

Reliance is placed by petitioner upon the decision of this Court in *J. I. Case Co. v. National Labor Relations Board* (1944), 321 U.S. 332, 64 S. Ct. 576, 88 L.Ed. 762.

The argument thus offered is both specious and unsupported by fact or law. The problems presented

in the *Case* case do not remotely resemble the questions we have here, nor are there reasons here calling for a consideration of this case in the light of the *Case* case. In the *Case* case individual contracts of hire were extracted by the employer from individual workmen, which were lesser conditions than those obtained by a general collective bargaining agreement, and it was found that these individual contracts had a deleterious effect on the collective bargaining process and the rights of the workers to union organization.

It must be recalled that the National Labor Relations Act was adopted to correct abuses which had existed theretofore in the matter of the self-organization and representation of working people and that the statute was designed to give workers an opportunity to meet employers upon somewhat equal terms. The rationale of the decision in the *Case* case was to protect the collective bargaining rights of workers. That was the basic purpose of the National Labor Relations Act.

Allen Bradley Co. v. Local Union No. 3, Intern. Broth. of Elect. Workers (1945), 325 U.S. 797, 65 S.Ct. 1533, 89 L.Ed. 1939; rehearing den. 66 S.Ct. 11;

Republic Aviation Corp. v. N. L. R. B. (1945), 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 557, 157 A.L.R. 1081, rehearing den. 65 S.Ct. 1401, 325 U.S. 894, 89 L.Ed. 2005;

N. L. R. B. v. Fansteel Metallurgical Corp. (1939), 306 U.S. 240, 59 S.Ct. 490, 83 L.Ed. 627, 123 A.L.R. 599;

N. L. R. B. v. Pennsylvania Greyhound Lines (1938), 303 U.S. 261, 58 S.Ct. 571, 82 L.Ed. 831, 115 A.L.R. 307.

Petitioner argues here that individual contracts of hire in conflict with collective bargaining agreements, whether on better or lesser terms than the collective bargaining agreement, vitiate the collective bargaining process. These are the fallacies of petitioner's argument:

(1) The instant contract contained in the shipping articles and riders thereto resulted from the collective bargaining process and were not individual contracts of hire. They were made by the unions' representatives for the crew as a whole as a result of negotiations and discussions with the shipowner, who in turn reduced the agreement thus reached to writing in those articles and riders thereto. The Stewards Department, which is involved in the instant case, was represented by union officials who met with company officials and reached the agreement put into the riders by the shipowner so far as war bonus was concerned. The wage rates and ratings appearing in the articles proper were obtained from the basic collective bargaining agreement between the National Union of Marine Cooks & Stewards and the shipowners, dated July 5, 1940. It is thus obvious that there were no individual contracts of hire in this case, but rather an agreement between the union and the shipowner which governed all voyages, including the instant voyage, and then a special rider to the articles

for this particular voyage covering the crew as a whole and arrived at through the collective bargaining process. There was no individual contract between any single crew member and the shipowner, which was condemned in the *Case* case. Also unlike the *Case* case, the rider agreement was the result of the collective bargaining process and not of dealing between individual seamen and shipowner. (R., *Federer* case, 103.)

In the *Case* case the workers who had individual contracts of hire had conditions which were poorer than those obtaining under the collective bargaining agreement. In our case the Court of Appeals has decided that the seamen should get what the collective bargaining agreements actually provided, both insofar as the general agreement is concerned and insofar as the war bonus rider agreement for this particular voyage of the *President Harrison* is concerned.

(2) The articles contained the terms of hire and wages and conditions of the crew as required by the Shipping Commissioner Act, 46 U.S.C. §§ 563, 676. What happened in this case, as is the general practice in the shipping industry and has been for many years prior to the commencement of this litigation, is that collective bargaining agreements between maritime unions and shipowners contained the basic rates of pay and conditions of workers and the mode of processing grievances between union and employer.

However, when crews are engaged, the shipping articles contain the agreement between the particular crew and particular vessel, in which instance resort

is had to the collective bargaining agreements to obtain the ratings, rates of pay, and other matters which the law provides must be inserted in the shipping articles. But once the articles have been signed, that constitutes the agreement between shipowner and crew and there is no authority in either to depart from that agreement. The Shipping Commissioners Act was adopted in 1872 to protect seamen against abuses which had long been prevalent in the maritime trade. *Young v. American SS Co.* (1882), 15 Otto 41, 26 L.Ed. 966.

The salutary purposes of this Act call for the protection by the Courts of seamen who are their wards in cases such as this where a shipowner proposes to evade the bargain he has made with his crew. The Court of Appeals sustained respondent seamen in this contention.

(3) There is presented here no general collective bargaining problem under the National Labor Relations Act.

No attempt was made by the seamen here to evade the collective bargaining process or to argue that collective bargaining agreements are not applicable. What the seamen have said here is that the collective bargaining process resulted in the contract which was made and that the shipowner is now seeking to evade its obligations under that contract. The Court of Appeals construed both the articles with the riders thereto and the collective bargaining agreements, including the supplementary war bonus agreements, in reach-

ing its decision. (177 Fed. (2d) 109.) How then can it be said that these seamen are trying to evade the collective bargaining process, or that the Court of Appeals has ignored the question even if it were presented? We assert, however, that there is no collective bargaining question here at all, but that this is the only proposition upon which petitioner can hang its hat to obtain review in this Court of a case which otherwise has been decided against it in the Court of Appeals, and which petitioner has confessed offers no reviewable questions on certiorari to this Court.

Nor is there anything in *American Federation of Labor v. American Sash and Door,* 335 U.S. 538, 69 S.Ct. 260, in conflict with what we have argued here. That case involved only the question of how far a state could go in proscribing certain union activities of a closed shop character. Mr. Justice Frankfurter's concurring opinion, reviewing as it did the history and philosophy of labor's rights to organize as it encountered other social forces, offers no solace for petitioner in attempting to avoid obligations under a contract of which it was the author. If anything, this decision and the ideas there expressed would lead one to conclude that where as here agreement has been reached between seamen and shipowner concerning employment, that the agreement is to be honored.

(4) The National Labor Relations Act as originally adopted protected the right of workers to collective bargaining and the designation of union representatives of the workers' own choice. This we have noted above. Nothing in this case interfered with the

collective bargaining process or the rights of workers thus guaranteed. On the other hand, there is nothing in the case which deprived the shipowner as an employer of any rights which it had under the Act. It recognized the unions of the crew as their collective bargaining representatives and then proceeded to enter into collective bargaining agreements with those unions. Part of the collective bargaining process brought about the riders to the articles of the *President Harrison* calling for war bonus. Accordingly, the entire procedure was in accord with the purposes of the Act and did not in any way detract from its purposes.

III.

INSOFAR AS GENERAL MARITIME PRINCIPLES GOVERN THIS CASE, THE DECISION OF THE COURT OF APPEALS SHOULD NOT BE DISTURBED BY THIS COURT.

The Court of Appeals has pointed out that seamen are the wards of admiralty and that the federal Courts are solicitous in their protection of seamen's rights. (177 Fed. (2d) 108.) This Court has similarly declared on every occasion where seamen's problems have been presented to it.

"The Osceola" (1903), 189 U.S. 158, 47 L.Ed. 760, 23 S.Ct. 483;

Panama Railroad Co. v. Johnson (1924), 264 U.S. 375, 68 L.Ed. 748, 1924 A.M.C. 551;

Garrett v. Moore-McCormack Co. (1942), 317 U.S. 239, 87 L.Ed. 239;

Aguilar v. Standard Oil (1943), 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107, 1943 A.M.C. 451; *Socony Vacuum Oil Co. v. Smith* (1939), 305 U.S. 424, 59 S.Ct. 262.

The various statutes which have been enacted by the Congress for the protection of seamen's rights attest to the realization by the country generally of the necessity to protect the rights of seamen in order to ensure a strong and well-functioning merchant marine.

Seamen bound to their vessel by articles are subject to the rigorous discipline of the sea. They cannot leave the vessel without visiting upon themselves penalties for desertion. Voyages are oftentimes long and arduous. The exacting nature of the calling has been compensated by liberal protection of seamen's rights and liberal construction of statutes granting seamen benefits. Among those are the statutes protecting their wage guarantees. The Shipping Commissioners Act, requiring as it does all the details of the voyage to be set down, does not permit of departure from the terms of the articles.

Shipowners likewise have been given adequate protection by Congressional enactments. Statutes limiting liability and granting subsidies and other benefits have long existed for the benefit of shipowners. There is every reason why the seamen's rights in this case should be protected. These men went out on a dangerous voyage during desperate days. The contract which they had was in some measure to compensate them in the event anticipated dangers met fulfilment. The

compensation that these men will receive for the years they spent as prisoners of war is small reward for the hardships and privation they underwent.

Under the circumstances of this case where the contract was drawn by the shipowner itself with the thought in mind that perils of war might fall upon the crew as well as the vessel, any reasonable construction of the case which would support an award in favor of the seamen should be affirmed. That was the finding of the Court of Appeals, and no reason exists to disturb that finding here. The argument of the shipowner, accepted by the District Court is a tortured one, unsupported by the facts of the case and fully lacking in logic.

It seems apparent that what the shipowner is trying to do is relitigate the question of the construction of the contract. (Petitioner's Brief, p. 34.) It advances the collective bargaining argument as a wedge to get into this Court to continue litigation on a question of contract construction. We submit that ordinary rules applicable to seamen's rights should prevent such efforts on the shipowner's part.

The argument that this contract is of general application is completely fallacious. There is present here no such matter as that contained in *Cosmopolitan Shipping Co. v. McAllister* (1949), 337 U.S. 783, 93 L.Ed. 1278, and *Fink v. Shephard SS Co.* (1949), 337 U.S. 810, 93 L.Ed. 1287. In those cases the problem of general agency contracts was involved applying to the industry generally, and the question presented was whether the agency contracts made the private shipowner non-suable.

In our case the contract applies to this ship and this shipowner and this voyage and nothing else, and the problem once resolved will affect no one but the parties to this litigation.

CONCLUSION.

There is here no question of general or national importance unless that be to insure that seamen shall obtain the benefits called for by law and their contract, and that result already has been obtained in the Court of Appeals. There is here no conflict between decisions of various courts of appeal, conflict with applicable decisions of this Court or conflict between state and federal courts. Nor is there here presented a question of the construction of any federal statute. The argument of petitioner here is completely makeweight.

We submit that the years of litigation that this case has undergone should finally be terminated with a denial of the petition.

Dated, San Francisco, California,
April 24, 1950.

Respectfully submitted,
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